

REMARKS

Rejections of Claims and Traversal Thereof

In the May 14, 2009 Office Action,

claims 17-26 and 32-34 were rejected under 35 U.S.C. §112, first paragraph;

claims 17-26 and 32-34 were rejected under 35 U.S.C. §112, second paragraph;

claims 17-26 and 32-33 were rejected under 35 U.S.C. §102(b) as being anticipated by Kyle (US 2004/0047881); and

claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kyle et al. (US 2004/0047881) in view of Nakamura et al, JP 200354490 (abstract).

The above-defined rejections are hereby traversed, and reconsideration of the patentability of the pending claims is requested, in light of the ensuing remarks.

Rejection under 35 U.S.C. §112, first paragraph

Claims 17-26 and 32-34 were rejected under 35 U.S.C. §112, first paragraph, because the Office contends that the claims introduce new matter. Applicants disagree. Examples 1 to 4 and paragraphs [9], [13], [40], [55] and [56] provide sufficient support the claim terminology. Applicants have amended claims 17 and 21 thereby obviating this rejection and no new matter has been introduced..

Rejection under 35 U.S.C. §112, second paragraph

Claims 17-26 and 32-34 were rejected under 35 U.S.C. §112, second paragraph for being indefinite. Applicants have amended the claims thereby obviating this rejection and request withdrawal of same.

Rejection under 35 U.S.C. §102(b)

Claims 17-26 and 32-33 were rejected under 35 U.S.C. §102(b) as being anticipated by Kyle (US 2004/0047881, hereinafter Kyle '881) because according to the Office, Kyle teaches all the elements of applicants' claimed invention. Applicants vigorously disagree.

Initially it should be noted that the Kyle '881 US published application is a CIP of PCT International Application No. PCT/US02/08651, filed on March 22, 2002, which in turn claimed priority to US Provisional Application No. 60/277,947 filed on March 23, 2001 (Copies of both applications are included in Appendix A). However, reviewing both the provisional application and the subsequently filed PCT application, it is evident that neither of these documents disclose, teach or suggest the presently claimed invention. As such, the Kyle '881 US published application is only entitled to the September 5, 2003 filing date.

Notably a review of applicants' US Provisional Application No. 60/410,818 dated September 16, 2002 (Appendix B) provides full support for the presently claimed invention. Thus, **the Kyle '881 US published application is not competent prior art** because the Kyle US filing date of September 5, 2003 is after applicants' effective filing date of September 16, 2002. Applicants request that this rejection be withdrawn.

Rejection under 35 U.S.C. §103(a)

Claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kyle '881 in view of Nakamura et al, JP 200354490 (abstract). Applicants submit that Kyle '881 is not competent prior art, and as such, this rejection should be withdrawn.

Klimpel et al.

Notably Klimpel et al with an effective filing date of September 9, 2003 is not competent prior art because its effective filing date is after applicants' effective filing date of September 16, 2002.

Rejoinder of Method Claims

When an application as originally filed discloses a product and the process for making and/or using such product, and only the claims directed to the product are presented for examination, when a product claim is found allowable, applicant may present claims directed to the process of making and/or using the

patentable product for examination through rejoinder procedure in accordance with MPEP §821.04, provided that the process claims depend from or include all the limitations of the allowed product claims.

The currently pending method claims include all the limitations of the product claims and meet all standards of enablement, written description and definiteness under 35 U.S.C. §112. Accordingly, the method claims are in form suitable for future examination upon their rejoinder with the allowed product elected claims. Applicants are requesting that all method claims be rejoined, examined and found allowable.

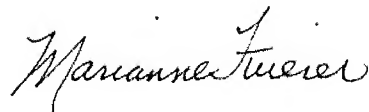
Fees Payable

If a fee is found due for entry of this amendment, the Commissioner is authorized to charge such fee to Deposit Account No. 13-4365 of Moore & Van Allen.

Conclusion

Applicants have satisfied all the requirements for patentability. All pending claims are free of the art and fully comply with the requirements of 35 U.S.C. §112. It therefore is requested that Examiner Devi reconsider the patentability of pending claims in light of the distinguishing remarks herein and withdraw all rejections, thereby placing the application in condition for allowance. Notice of the same is earnestly solicited. If any issues remain outstanding incident to the prosecution of the application, Examiner Devi is requested to contact the undersigned attorney at (919) 286-8089.

Respectfully submitted,

A handwritten signature in cursive script, reading "Marianne Fuierer".

Marianne Fuierer
Reg. No. 39,983
Attorney for Applicant

Moore & Van Allen, PLLC
Telephone: (919) 286-8000
Facsimile: (919) 286-8199

APPENDIX A